

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 15-0715

LEROY S. ROBINSON,

APPELLANT,

v.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before LANCE, SCHOELEN, and PIETSCH *Judges*.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

On July 14, 2016, the Court ordered the Secretary, within 15 days of the date of that order, to assemble the appellant's paper source documents, provide them to the appellant's representative for review pursuant to Rule 10(d) of the Court's Rules of Practice and Procedure, and submit a notice to the Court indicating that he had done so or, if unable to do so, detailing the reasons why he could not. The Court further ordered each party, within 7 days of the date the Secretary filed his initial notice and every 15 days thereafter until the RBA dispute is resolved or the parties reach an impasse, to advise the Court as to the status of the RBA dispute. The Secretary's initial response to the Court's order was due by July 29, 2016.

On July 27, 2016, the Secretary filed a motion to stay the effect of the Court's order for 60 days, explaining that, although he had "obtained and [was] in the process of preparing [the a]ppellant's paper source documents for production, . . . he [was] examining his options for appealing." Secretary's July 27, 2016, Motion at 2. The appellant filed a response opposing the Secretary's motion on August 5, 2016.

On August 10, 2016, the Court denied the Secretary's motion and directed the Secretary to submit his response to the July 14, 2016, order, as well as a motion for leave to file his response out of time, within 7 days of the date of that order. The Court also ordered the Secretary to explain "why the Court should not impose sanctions for failing to comply with an order of the Court." *See* U.S. VET. APP. R. 38(b). The Secretary submitted his response and a motion for leave to file his response out of time on August 17, 2016. On August 24, 2016, the Secretary filed a second response. On August 24 and 30, 2016, the appellant filed notices of relevant information pursuant to the Court's decision in *Solze v. Shinseki*, 26 Vet.App. 299 (2013) (per curiam order).

In his motion for leave to file his response out of time, the Secretary explains that he "did not ignore the Court's July 14, 2016, Order, or choose not to comply with it; instead, the Secretary filed a motion with the Court two days prior to the [deadline], . . . respectfully requesting that a stay be imposed." Secretary's Aug. 17, 2016, Motion (Mot.) at 3. He states that, since the Court's August 10, 2016, order denying his motion to stay, he "shipped [the] paper source documents to the Philadelphia VA Regional Office (RO)" for review by the appellant's counsel. *Id.* at 4. He contends that sanctions are not warranted in light of his "reasonable concerns" regarding the effect of the Court's July 14, 2016, order, "of which the Secretary made this Court aware" in his motion to stay. *Id.* at 5-6 (citing *Harvey v. Shinseki*, 24 Vet.App. 284 (2011), and *Pousson v. Shinseki*, 22 Vet.App. 432, 436 (2009)).

In his August 24, 2016, notice, the appellant contends that communication from the Secretary's counsel has been "minimal, if any" and asserts that the Secretary's response to the contrary is "simply disingenuous." Appellant's Aug. 24, 2016, Notice at 4. In his August 30, 2016, notice, the appellant contends that, after his counsel scheduled a time to review his paper claims file at the RO and "traveled a significant distance" to conduct the review, his representative was told that the file was not, in fact, available for review, as it had "sent away to an off-site scanning vendor" on August 19, 2016—prior to when the appellant's representative scheduled the review appointment—"because its paper contents have not yet been scanned into VBMS." Appellant's Aug. 30, 2016, Notice at 3.

The Court will grant the Secretary's motion for leave to file his response out of time and direct the Clerk of the Court (Clerk) to docket his August 17, 2016, response as filed as of that date. In light of the Secretary's responses and the appellant's notices, the Court will suspend the response schedule set forth in its July 14, 2016, order, and it will order the Secretary, within 7 days of the date of this order, to respond to the contentions raised by the appellant's notices. The Court holds in abeyance the issue of whether sanctions are warranted in this case.

Upon consideration of the foregoing, it is

ORDERED that the Secretary's August 17, 2016, motion for leave to file out of time his response to the Court's July 14, 2014, order is granted, and the Clerk shall docket his August 17, 2016, response as filed as of that date. It is further

ORDERED that, within 7 days of the date of this order, the Secretary respond in a manner consistent with this order.

DATED: September 1, 2016

PER CURIAM

Copies to:

Tara R. Goffney, Esq.

VA General Counsel (027)